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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 DAVID BROWN,

12 Petitioner,

13 v.

14 PEOPLE OF THE STATE OF  
15 CALIFORNIA,

16 Respondent.  
17

No. 2:23-CV-1835-DMC-P

ORDER

and

FINDINGS AND RECOMMENDATIONS

18 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of  
19 habeas corpus pursuant to 28 U.S.C. § 2254.

20 On March 18, 2024, the Court dismissed Petitioner's petition and directed  
21 Petitioner to file an amended petition within 30 days. Petitioner was warned that failure to file an  
22 amended petition may result in dismissal of this action for lack of prosecution and failure to  
23 comply with court rules and orders. See Local Rule 110. To date, Petitioner has not complied.

24 The Court must weigh five factors before imposing the harsh sanction of  
25 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
26 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
27 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
28 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,  
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
4 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to  
7 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
8 1260-61 (9th Cir. 1992).

9 Having considered these factors, and in light of Petitioner's failure to file an  
10 amended petition as directed, the Court finds that dismissal of this action is appropriate.

11 Based on the foregoing, the undersigned orders and recommends as follows:

12 1. It is ORDERED that the Clerk of the Court randomly assign a District  
13 Judge to this case.

14 2. It is RECOMMENDED that this action be dismissed, without prejudice,  
15 for lack of prosecution and failure to comply with court rules and orders.

16 These findings and recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
18 after being served with these findings and recommendations, any party may file written  
19 objections with the court. Responses to objections shall be filed within 14 days after service of  
20 objections. Failure to file objections within the specified time may waive the right to appeal.  
21 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22  
23 Dated: May 9, 2024

24   
25 DENNIS M. COTA  
26 UNITED STATES MAGISTRATE JUDGE  
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